



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: CNR, FF

Introduction

This is the Tenants' application to cancel a Notice to End Tenancy for Unpaid Rent and to recover the cost of the filing fee from the Landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issues to be Decided

- Should the Notice to End Tenancy issued August 16, 2010 be cancelled?

Background and Evidence

The rental unit is located on a farm. The tenancy began on February 1, 2010. The Tenant SM testified that he was personally served with the Notice to End Tenancy on August 16, 2010.

The parties entered into an oral tenancy agreement whereby monthly rent is \$1,200.00 per month plus utilities. The parties disagreed with respect to the amount the Tenants were required to pay for utilities. The Tenants testified that originally utilities were set at \$100.00 per month but that subsequently they agreed to pay \$130.00 per month. The Landlord testified that the Tenants were supposed to pay \$150.00 a month for utilities.

Monthly rent was to be “paid” by the Tenants working the farm. The parties did not agree with respect to what work was to be done by the Tenants in order to pay the rent. The Landlord testified that the Tenants were not providing the services agreed upon, and that the Tenants owed \$3,000.00 in unpaid rent. The Tenant SM testified that he only owed \$600.00 in unpaid rent. The Tenant SM testified that the Landlord fired him on the day after the Notice to End Tenancy was issued and therefore took away the method by which the Tenants could pay the rent.

The Landlord provided a copy of a tenancy agreement in evidence, but it was not signed by either party. The Tenants testified that they did not sign the tenancy agreement because it was presented to them 3 months after they moved into the rental unit and it did not accurately capture the terms they had agreed to in February, 2010.

The Tenant SM testified that he wanted to move out of the rental unit and suggested that he could be out of the rental unit by November 30, 2010. The Landlord asked for an Order of Possession effective October 31, 2010.

Analysis

During the Hearing there was much discussion surrounding the amount of rent that was owed to the Landlord. This is the Tenants’ application and I cannot entertain a request by the Landlord for a Monetary Order for unpaid rent. The parties have co-mingled a tenancy agreement with a contract of employment or a contract for services and therefore the parties will have to take any applications they may have with respect to monetary claims before another court of competent jurisdiction. However, the Tenants agreed that they owe \$600.00 in rent for the month of August, 2010. Therefore, their application to cancel the Notice to End Tenancy for Unpaid Rent is dismissed.

The Landlord asked for an Order of Possession effective October 31, 2010, and I hereby provide the Landlord with an Order of Possession effective that date.

The Tenants have been unsuccessful in their application to cancel the Notice to End Tenancy and are not entitled to recover the cost of the filing fee from the Landlord.

Conclusion

The Tenants' application is dismissed.

I hereby grant the Landlord an Order of Possession **effective 1:00 p.m. October 31, 2010**. This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 01, 2010.
